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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	PR Docket No. 92-257
)	RM-7956, 8031, 8352
)	
Amendment of the Commission's Rules)	Second Further Notice of Proposed
Concerning Maritime Communications)	Rulemaking

COMMENTS OF
MOBILE MARINE RADIO, INC.

Martin W. Bercovici
Keller and Heckman, LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for Mobile Marine Radio, Inc.

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EXECUTIVE SUMMARY

The maritime public correspondence service is unique among the various commercial mobile radio services. The maritime public correspondence service reflects an integration of the public correspondence function with the systems and operations utilized for ship-to-ship, vessel operational and distress and safety communications. The Commission in the Second Further Notice of Proposed Rulemaking ignores this unique role played by the maritime public correspondence service, and instead proposes block licensing over extended geographic areas which would serve to convert the maritime public correspondence service into a generic commercial mobile radio service. The only distinction between this service, as proposed, and the cellular, PCS and SMR services currently available, would be the frequency complement — ten VHF public correspondence channels compared with hundreds of channels in the other services. Any effort to commercially exploit the VHF public correspondence frequency complement to its full capacity will necessarily undermine service to the maritime community.

The Commission is urged to distinguish between the maritime operating regions, *i.e.*, service along the coastal zones and major inland waterways, and the use of the maritime channels in the remainder of the continental United States. While a generic mobile service may be appropriate in the interior region, MMR urges the Commission to retain the maritime nature of operation on these frequencies along the coastal zone and along the inland waterways. Moreover, existing maritime VHF operators, who long have been denied the opportunity to expand and improve their services by rigidly applied licensing rules should be afforded the first

opportunity to expand current systems, in terms both of frequency of operation and geographic coverage.

Operating requirements should be brought into conformity with current practices and technology. These changes include elimination of the radiotelegraph operator licensing requirement, just as the Commission has removed operator licensing requirements in numerous other services, and abolition of the manual distress watch requirement. If not actually provided by the Coast Guard itself, the distress watch should be left to the Coast Guard to negotiate on a commercial basis.

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MOBILE MARINE RADIO, INC.

Mobile Marine Radio, Inc. ("MMR"), by its attorneys, respectfully submits its Comments in response to the Second Further Notice of Proposed Rulemaking issued by the Commission in the ongoing proceeding to review and update the Commission's maritime regulations.

I. Introduction and Statement of Interest

Mobile Marine Radio is a Commercial Mobile Radio Service (CMRS) provider, rendering HF, MF and VHF band public coast station service, providing all communications modes between ships at sea and shore points and also along the Gulf Coast offshore the State of Alabama and throughout the Alabama river system.

MMR consistently has supported improvement in maritime communication services. Indeed, MMR was alone among the VHF coast station operators in supporting the development of the automated system operating in the 216-220 MHz band; and MMR has been an innovator

in HF band maritime services. MMR continues to encourage technological developments and regulatory changes which will lead to improvements in service to the maritime community.

In the First Report and Order in this proceeding, issued more than two-and-one-half years after the initiation of this docket, the Commission adopted rules to reclassify international public coast stations as "non-dominant" common carriers, and further revised the rules to allow the use of VHF maritime public correspondence frequencies by certain land mobile interests.

Contemporaneously, the Commission adopted a Further Notice of Proposed Rulemaking. More than two years later, the Commission issued its Second Report and Order in this proceeding and also initiated the current rulemaking phase. In the Second Report and Order, the Commission modernized the rules to provide for certain technical, operational and regulatory flexibility in the operation of the maritime services. The Commission in the current phase of this proceeding proposes policy and rule changes which would vitally change the maritime communications service.

II. Comments

A. General

Under Part 80 of its rules and regulations, the Commission provides the domestic rules for the operation of radiocommunication systems to meet the needs of the maritime community, for vessels operating both locally in inland or coastal waters as well as those on the high seas and requiring communications with land points in the United States. These regulations

are an extension of an internationally standardized system which enables use of common systems for vessel operational, ship-to-ship, public correspondence, distress and safety needs, and further enables the world maritime fleet a common system for communications whether on the high seas or in domestic or foreign ports. This internationally standardized system has been relied upon for decades by the maritime community operating throughout the world.

The underlying theme of the instant Second Further Notice of Proposed Rulemaking is to eliminate the distinctive maritime functional characteristics of the maritime public correspondence frequencies, and to recast operation of those frequencies into the mold which has developed within the United States under the generic reference of Commercial Mobile Radio Service. This follows the dissolution of barriers in the traditional "land" mobile services, which has allowed full functionality of those systems, including the ability to provide public correspondence service to vessels. Moreover, the Commission has reciprocated by authorizing maritime systems to use their excess capacities to serve land-based users. Notwithstanding, operations in the international maritime bands have retained a distinct maritime service orientation. Importantly, roaming vessels, and particularly deep draft vessels visiting U.S. ports, could be assured of the ready ability to communicate with land-based stations for the handling of their "public correspondence" traffic. Full interoperability between coast and vessel stations on an internationally standardized basis has been the hallmark of the maritime service.

In this Second Further Notice of Proposed Rulemaking, the Commission proposes to go far beyond the actions taken to date to modernize the maritime service and to provide

maritime operators with long-needed flexibility to allow efficient and economical operation. Just as certainly as the licensing waivers granted over the past decade to allow SMR systems to directly interconnect and to operate wide area networks has transformed the SMR service into a generic CMRS, openly advertising functional equivalence to cellular service, so the adoption of the changes proposed in this Notice would turn the VHF maritime industry into simply another generic mobile service, albeit frequency constrained, and one which necessarily must forsake the maritime user in search of the high volume land mobile user base necessary to compete with cellular, PCS, SMR and other commercial mobile radio services.

Clouding the policy which since the early days of radio has supported a distinct maritime service is the commercialization of the licensing process, by which competition for license authority is resolved through the auctioning of the radio spectrum. Factors which affect the value of spectrum in the auction process include (i) the scope of geographic coverage, particularly and specifically including the opportunity to serve large, urbanized areas, and (ii) the aggregation of channels to provide substantial operating capacity. As to the latter, the maritime public correspondence service is limited in frequencies, having only ten public correspondence channels. Those channels, however, are broadband in nature, compared with bandwidths in other mobile applications; and accordingly, channel-splitting will enable a successful applicant to increase the system capacity by a factor of 100 percent, and very possibly by more.^{1/} In the

^{1/} Narrowbanding operations on the maritime public correspondence frequencies, absent international standardization, well may have the effect of precluding ships on international voyages from utilizing the local VHF maritime stations.

Second Further Notice, the Commission proposes to capitalize on both of these factors, looking toward block licensing of all of the unassigned VHF maritime channels within each of nine regions within the country, thereby allowing the frequencies to be used for a generic mobile radio service.

As the Commission learned in the auctioning of the "C" block PCS channels, the mere availability of spectrum and the opportunity to establish a new commercial mobile service do not necessarily equate to successfully raising funds through the auction process. Indeed, the maritime public correspondence channels are substantially impaired from the perspective of their commercial value in an auction setting. As proposed in the Notice, only those channels which are not currently assigned would be eligible for the regional license scheme proposed in the Second Further Notice. Of the top 25 cities, 18 are located in coastal zones or on major waterways. These cities include Boston, New York, Baltimore, Miami, New Orleans, St. Louis, Chicago, Cleveland, Houston, Los Angeles, San Francisco and Seattle. Consequently, a majority of the VHF maritime public correspondence channels already are assigned in more than 70% of those cities having the most need and promising the greatest commercialization opportunity for commercial mobile service. Necessarily, the value of the maritime spectrum for auction will be seriously impaired. Indeed, it may be that only the incumbent licensee in an area will be able to effectively exploit the proposed opportunity for new commercialization of the maritime frequencies for generic mobile radio service operation; and in those circumstances, there can be little expectation of competition for the licensing of the maritime channels. Even for the

incumbents, the commercial value is relatively nominal. With a maximum of 250 kHz in available bandwidth, the VHF marine allocation is a very thin shadow of the cellular, PCS and SMR allocations, and thus will be in a poor competitive posture with those services.^{2/}

Finally, there is a basic issue of fundamental fairness with regard to the recasting of the maritime frequencies as proposed in this Notice. MMR and other licensees have faithfully served the maritime community for decades, laboring under the heavy thumb of the Commission's rigid regulatory environment. The concept of automatic interconnection adopted in the Second Report and Order was advanced by MMR some twenty years ago, when touchpad systems provided the operational feasibility for said service, and was rejected by Commission staff. Similarly, MMR was rebuffed in efforts to marshall frequencies and to aggregate channels, including having application for license authority rejected due to the fact that a new station, designed to expand the continuity of its service, would cause interference to one of MMR's own, existing station. Having labored under such a restrictive environment for fifty years, the Commission now, following the institution of flexibility in maritime operations, proposes to bestow the benefits of that operational flexibility on the highest bidder; and it further proposes to redefine the service area through the regional licensing concept in such a way as to convert the maritime operating frequencies into a pure financial play, without relevance to the underlying maritime service characteristics or concepts.

^{2/} The basic cellular assignment block exceeds 300 channels; there are 280 SMR channels, and the assignable PCS frequency blocks are either 10 or 30 MHz.

Finally, from a maritime service standpoint, to the extent the Commission is successful in encouraging a recasting of the maritime frequencies as a generic mobile service, optimized to serve the largest number of users without regard to whether they are maritime, land mobile or fixed stations, the withering away of the universal maritime service capability throughout the coastal zones will have a downward spiral effect upon the incumbent licensees. As vessels learn that they no longer can rely upon the standardized maritime service to be available throughout the coastal network, those users will shift to satellite or other systems and eventually abandon the maritime network completely. Consequently, the license scheme contemplated by the Commission in this Second Further Notice of Proposed Rulemaking can only lead to the demise of the maritime service as it has existed since the early days of radio.

In the following section, MMR comments on specific elements of the Second Further Notice, to the extent not addressed above.

B. Specific Comments

(i) Radiotelegraph Operator Licensing

MMR, in its comments in response to both the Notice of Proposed Rulemaking and the Further Notice of Proposed Rulemaking, has detailed the need for elimination of the operator licensing requirements for radiotelegraph stations.^{3/} As the Commission observes in Second Report and Order and Second Further Notice of Proposed

^{3/} See, MMR Comments (June 1, 1993) at 11-12; MMR Comments (September 22, 1995) at 20; Second Report and Order at ¶ 51.

Rulemaking, the ITU regulations do not require licensed operators at radiotelegraph coast stations, and the Commission has rescinded similar operator licensing requirements for virtually every other radio service. The Second Report and Order, while concurring on the merits of rescission of the operator licensing requirements for radiotelegraph coast stations, concludes that said issue was beyond the scope of the Further Notice, and has requested comments on this issue in the Second Further Notice.^{4/} For the reasons set forth in MMR's Comments in response to the NPRM and to the Further Notice of Proposed Rulemaking, and for the reasons relied upon for the Commission otherwise to eliminate operator licensing requirements in the maritime service, MMR urges the Commission to exempt the maritime radiotelegraph service from operator licensing requirements, as well.

(ii) Geographic Service Areas

As set forth in the General Comments above, the licensing of the maritime VHF public correspondence frequencies along the broad geographic regions as defined by the coast guard districts will serve to undermine the maritime service nature of operations on these frequencies, diverting channels to generic mobile service which is dominated by the economic base provided by land mobile operations. As an alternative, the Commission should consider maintaining the maritime service as a distinct service area, with the maritime service area being defined by the 72-mile band extending from navigable waterways adopted in the First Report and Order in this proceeding, and a second non-maritime service area comprised of the regional

^{4/} Second Report and Order at ¶ 52.

service area such as proposed in this notice. Only in this manner will the Commission protect the integrity of the operation of these frequencies for the maritime user community.

(iii) Treatment of Incumbent Licensees

MMR concurs that incumbent licensees must be protected against harmful interference from any new operations or operators in the band. Common carrier service, whatever the nature, has been accorded protection against interference from co-channel operations.^{5/}

With regard to promotion of maritime services, MMR urges the Commission to afford incumbent maritime public coast station operators the opportunity to expand their systems, both geographically to adjacent regions of the coastline or inland waterway, and by additional frequencies. These incumbent licensees have been subject to restrictive licensing policies, limiting their ability to improve the services they offer to the maritime user community. Rather than ignoring the contributions the incumbent licensees have made, the Commission should, for a period of one year, allow incumbent licensees to expand and improve their operations, as would have occurred had the Commission not heretofore enforced restrictive licensing policies. The goal should be one of recognizing service contributions and enabling those who have pioneered in this service to continue to grow, rather than to turn the few

^{5/} MMR does not take a position on whether, or to what extent, incumbent private land mobile licensees, operating on maritime channels inland from navigable waterways, should be afforded protection vis-a-vis any new, inland, licensing in the band.

maritime channels available into a pure financial play, without regard to the impact upon the maritime user community.

(iv) Regional Coverage Requirements

The Commission proposes to require construction and “substantial service” within ten years of licensing. MMR respectfully submits that a ten-year construction requirement, and potentially only to a 20% market penetration level, particularly for maritime service, provides no service commitment to the user community. Such a requirement is an invitation to warehouse frequencies, particularly — if as anticipated — the cost of licensing is low.

MMR urges the Commission to maintain a current construction requirement, e.g., one year, particularly along the coastline and for navigable waterways. Moreover, the construction requirement should extend to the installation of sufficient transmitters to provide service on the authorized frequencies, as contrasted with having a frequency agile transmitter available which can transmit on all frequencies. The latter is simply a channel warehousing device.

(v) Distress Watch

MMR long has maintained that the imposition of distress watch obligation upon public coast station licensees is inappropriate. The Commission notes that it is the Coast Guard which bears responsibility for search and rescue operations at sea and on inland waterways, and the distress watch is a function of that search and rescue responsibility. Where a

maritime public coast station relies upon the common channel (Channel 16) for calling functions, the station necessarily may not ignore distress calls which it may observe. On the other hand, both automation and remote public coast station operation are inconsistent with the maintenance of a manual, aural distress watch. Indeed, the Commission itself has tacitly recognized that the distress watch is an anachronism. This was demonstrated explicitly in a comparative hearing for mutually exclusive maritime applications to serve the Alabama coast where both the Private Radio Bureau as a party to the proceeding and the governing administrative law judge ignored violations of the distress watch requirement by one of the applicants.^{6/} Not only did the Bureau favor the party which ignored the distress watch in operation of other stations, but also it failed to follow up with any enforcement action.

No distress watch burden exists under Commission rules for cellular, land mobile, SMR, satellite or other systems which serve the maritime community. If the Commission truly intends to modernize the maritime service, it must relieve public coast station licensees, from the distress watch obligation. If the Commission is not prepared to amend its rules to do so, it then must *enforce* the obligation against all VHF maritime band licensees.^{7/} If the distress watch is sufficiently important to the Coast Guard and the Coast Guard is not prepared to maintain the distress watch itself, it should enter into an appropriate service

^{6/} See, Applications of COM/NAV Marine, Inc., PR Docket No. 87-345, 2 FCC Rcd 5456 (1987), 3 FCC Rcd 6198 (1988), 4 FCC Rcd 2603 (1989).

^{7/} For the Commission to maintain the safety watch obligation but adhere to the proposed ten-year/minimal 20% market penetration standard for system implementation requirement would be thoroughly inconsistent.

arrangement with the maritime licensee or another private party. The latter would provide for the actual maintenance of the distress watch under appropriate commercial arrangements and incentives, in replacement of a system which is honored in the breach while the Commission turns a blind eye.

(vi) High Seas Public Coast Stations

High seas public coast stations, operating in the HF and MF bands, are distinct, and should be treated separately from a regulatory standpoint from VHF public coast stations. The propagation characteristics in the HF and MF bands allow signals to carry for several thousands of miles, providing communications in some bands and under certain operating conditions up to halfway around the globe. In order to provide effective service to the ocean-vessel community, a public coast station requires a complement of frequencies, entailing channels in each band in order to accommodate propagation, atmospheric, time of day, sun spot and other conditions which influence the reliability of communications circuits. Moreover, the HF and MF band frequencies are shared on an international basis. Multiple allotments are made per channel, which affects the quality and reliability of service.

Channel loading requirements in the HF and MF bands always have been troublesome, due to the international sharing element of operation on these frequencies, as well as the external influences which impact upon channel utilization. MMR accordingly concurs in the proposal to eliminate channel loading requirements for high seas public coast stations. The means of regulating against the warehousing of frequencies is through the imposition and

enforcement of the construction requirement. Extension of the construction period from eight months to twelve months is reasonable. On the other hand, construction must be construed to mean having sufficient transmitter equipment to operate on the authorized channels. Again, simply having one transmitter with frequency agility should not be considered to constitute successful completion of the construction requirement where multiple channels are authorized.

(vii) Intra-Service Sharing of the Medium and High Frequency Bands

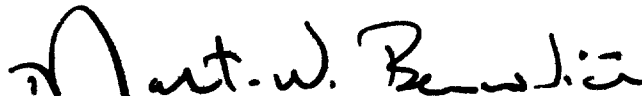
MMR has no objection to sharing of 2 MHz band public correspondence frequencies by private coast stations. As compared with other MF and HF bands of operation, the 2 MHz band presents the most appropriate candidate for sharing based on propagation characteristics. Insofar as extending sharing above the 2 MHz band, MMR respectfully submits such a concept is inappropriate. The scarcity of channels in the 4 MHz band, the high level of 4 MHz band use for public correspondence, and the use by foreign coast stations all combine to make that band inappropriate for private coast station sharing. Moreover, the higher HF bands (6 MHz and above) produce longer path ranges, higher densities of utilization, and are subject to a high degree of sharing internationally. These bands, accordingly, are very poor candidates for sharing, assuming that channels are sufficiently available for that purpose.

* * *

In conclusion, Mobile Marine Radio, Inc., respectfully submits that the maritime community, both domestic and international, should not be abandoned through the commercialization and neutralization of the maritime public coast station service as a distinct

category of common carrier operations. Relaxation of burdensome regulatory requirements and modernization of the maritime service has been a long sought goal of Mobile Marine Radio. To the extent the Commission adopts long-needed reforms to allow modernization of the maritime service, incumbent licensees should be accorded the first opportunity to take advantage of those rule changes to improve their current services and operations, rather than converting the maritime service to simply another generic land mobile service, the need for which has not been demonstrated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin V. Bercovici". The signature is written in a cursive style with a large initial 'M'.

Martin V. Bercovici
Keller and Heckman, LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001
(202) 434-4144

Attorney for Mobile Marine Radio, Inc.

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